REX v. GREEN BUS CO., LTD.

[Special Case (Gordon-Smith, J.) May 18, 1949]

[Singapore — Special Case No. 1 of 1949]

Municipal Ordinance S. 58(1) (w)(viii) — Garage Bye-laws — Whether open place used for parking motor vehicles is a garage.

Section 58(1)(w)(viii) of the Municipal Ordinance was amended in 1929 by the addition of the words "or parking" and the sub-section as amended reads:— "garages and places kept or used for repairing, painting, storing, housing or parking motor vehicles, except garages or places used in connection with private dwelling houses for housing motor vehicles kept for private use only". The Garage Bye-laws were made before this amendment and Bye-law 1 reads: "From and after the date of confirmation and publication of these bye-laws no land or buildings shall be used and no buildings shall be erected for any of the purposes defined in Section 57(1)(w)(viii) except under a licence granted by the Municipal Commissioners. In 1928 it had been held in a Malacca case that a piece of waste land used for parking vehicles was not a garage and it was because of this decision that the sub-section was amended in 1929. The question raised in this Special Case was whether a licence from the Municipal Commissioners was needed for the use of an unenclosed open space for parking motor vehicles. It was argued that as the relevant Bye-law itself had not been amended the amendment to the substantive law had no effect on the previously enacted Bye-laws.

Held, that the word "places" in section 58(1)(w)(viii) of the Municipal Ordinance includes all places, whether enclosed or not, that are used for the parking of motor vehicles subject to the limitation contained in that section.

SPECIAL CASE.

D. K. Walters — Amicus Curiae.

A. D. Farrell (D. P. P.) for the Crown.

Gordon-Smith, J. : — This is a Special Case submitted by the Magistrate, 6th Police Court, Singapore in accordance with the provisions of the Criminal Procedure Code, Section 317. The Magistrate convicted the accused Bus Co. on the 10th November inflicting a fine of $25.00.

The charge read "That you on 9.9.48 did use the above site (vacant land Lots 142 and 143[1] at Prinsep Street) as a garage without the licence in writing of the Municipal Commissioners, an offence under Section 58(1)(w)(viii) Garage Bye-law 1, punishable under Garage Bye-law 13 of the Mun. Ord."

This charge might have been better and more explicitly framed but the accused were represented by Counsel, no objection was raised to the charge and it was clearly understood that the accused were being charged with using the land as a place for parking vehicles, without the requisite Municipal licence.

Before the Magistrate Mr. Walters who appeared for the accused produced a ruling on this Bye-law by the C.J., F.M.S in 1928 in respect of an alleged offence at Malacca, the relevant Bye-law in this respect being exactly the same as in Singapore and he argued the case for the accused on the basis of this ruling and submitted that the Magistrate was bound by it and should therefore acquit the accused. In fact however the law was amended in 1929, probably in consequence of this ruling and the law is now different to what it was when this decision was given. It remains to be seen therefore how such amendment has affected the position, in relation to the facts of the present case.

The power to make Bye-laws is contained in Part VI Section 58 of the Municipal Ord: Ch: 135 (In the Murison Edition it is Ch: 133, Section 57).

Section 58(1)(w)(viii) reads: "garages and places kept or used for repairing, painting, storing, housing *or parking* motor vehicles, except garages or places used in connection with private dwelling houses for housing motor vehicles kept for private use only." The words "or parking" were inserted by Section 6 of an amending Ordinance No. 1 of 1929, and this is the amendment of the law I have referred to.

The revelant Bye-law (and it is the same for Malacca) is No. 1 enacted in 1923 and was under the enabling authority of Section 58(1)(w)(viii), (then Section 57), set out above. It reads: "From and after the date of confirmation and publication of these Bye-laws no land or buildings shall be used and no buildings shall be erected for any of the purposes defined in Section 57(1)(v)(viii) except under a licence granted by the Municipal Commissioners."

In the 1928 case before Gompertz C.J. the land or place used for parking the vehicle was a piece of waste land within the Malacca Municipality and the learned C.J. held after an inspection of the land, that it was "not a garage. Nor is it such a place as is intended by the section. Nor again is it used for storing or housing motor vehicles."

I do not question the correctness of the decision but, as I have said, in consequence of it, the law was amended and I do not think it now authoritative, in view of such amendment.

Mr. Walters submitted before me, that as the relevant Bye-law itself had not also been amended therefore the amendment to the substantive law had no effect on the previously enacted Bye-laws. In effect, this submission means that it was necessary to repeal and re-enact the Bye-law in exactly the same terms as previously.

If you have subsidiary legislation dealing with a specific point for which the enabling law has not provided authority it may well be that such subsidiary legislation is, or may be held to be, *ultra vires* but if you amend such enabling law by including that authority, then such subsidiary legislation becomes *intra vires* from the date of such amendment and if the amending legislation specifically says so, it may even have retrospective effect.

In the 1928 case the learned C.J. ruled that the general term "place" was coloured and controlled by the special term "garage" which preceded it but you must also read the section as a whole and these words were followed by the words "kept or used for repairing, painting, storing or housing motor vehicles." He held that the piece of waste land was not a garage nor was it "a place" intended by the section for storing or housing motor vehicles. I agree that one does not store or house motor vehicles on a piece of waste land but the addition of the words "or parking" inserted by the amending Ordinance requires the preceding words to be construed afresh and possibly in a different sense. The Oxford Dictionary defines "Park" as "a place where motor vehicles may be left unattended" and all the definitions in this connection refer to an open and not a roofed space. The amendment to the Ordinance makes the intention perfectly clear, that is, that parking places for public vehicles within the Municipality must be authorised as laid down in the Bye-laws and in construing the Ordinance and Bye-laws the object and intention of the legislature must, if possible be given effect to and followed and the words of a statute must be construed so as to give a sensible meaning to them if possible.

In my opinion, the 1928 case is not now authoritative on the point raised in the present case, in view of the facts in that earlier case and in consequence of the amendment to the Ordinance and I hold that the word "places"after the word "garages and" in Section 58 includes all places, whether enclosed or not, that are used for the parking of motor vehicles, subject of course, to the limitation contained in the Section.

Mr. Walters argued in the alternative that the accused should not have been convicted on the charge as framed. As I have stated, the charge might have been framed in better and clearer terms and no objection was raised at the trial but the case was argued at the trial on the very basis of the parking of motor vehicles in an unauthorised place. This point is also covered by Section 177 of the Criminal Procedure Code.

For these reasons I hold that the Magistrate was correct in convicting the accused.

I am grateful to Mr. Walters for having argued the case *amicus curiae*.

Order Accordingly.

CHEN CHI YA v. K. NAGAPPAN.

[Orig. Civil Juris. (Taylor, J.) May 27, 1949]

[Singapore — Civil Suit No. 344 of 1948]

Control of Rent Ordinance, 1947, S. 14 — Assignment in breach of obligations of tenancy — Sub-letting — Acquiescence.

Assignment of a monthly tenancy by the tenant, though in breach of an obligation not to assign without the landlord's consent, may pass the tenancy to the assignee but he is liable to be ejected at the discretion of the Court.

Principles and construction of the Control of Rent Ordinance, 1947, discussed and Oriental "hypothec" considered.

Cases referred to:—

(1) *Abdul Rahman v. Hassan* 1 F.M.S.L.R. 290 (P.C.).

(2) *Loke Yung Hong v. Shanghai Furniture Co.* (1948) M.L.J. at p. 143.

CIVIL SUIT.

Mark Morrison for the Plaintiff.

K. E. W. Hatchard for the Defendant.

The facts and arguments sufficiently appear from the Judgment.

Taylor, J. : — In this action the plaintiff, who is a landowner, claims possession of No. 1 Joo Chiat Road, damages for trespass and mesne profits.

The defendant, who is a master barber, contends that he is entitled to possession, because he became a tenant, in one or other of four ways, viz :—

(a) On assignment or sub-letting by a previous tenant;

(b) by acquiescence;

(c) on transfer to him of the business carried on in the premises;

(d) on a letting to him by the Japanese Custodian during enemy occupation.

The facts are as follows:

In 1939, the property was conveyed to the plaintiff, who is now abroad, by his father who has since managed the property on his behalf. The authority is not disputed and the word "plaintiff", in this judgment may, for brevity, include the father as the plaintiff's agent.